

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS,)
)
Plaintiffs)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)

DEFENDANT'S MOTION FOR SANCTIONS AGAINST MANDY DIAS

Pursuant to Fed.R.Civ.Pr. 37(b)(2), Defendants Eric Madonna and the City of Fall River hereby move for sanctions against Plaintiff Mandy Dias for failure to obey the court's order of August 22, 2007 concerning discovery.

In support of this motion, Defendants refer to the attached Affidavit of Attorney Gary P. Howayeck and Certificate of Compliance with Local Rule 37.1.

Defendants also state as follows:

1. On August 22, 2007 this court allowed Defendants' Motions To Compel Answers to Interrogatories and Production of Documents, originally served upon the Plaintiff Mandy Dias on October 19, 2006.
2. In response to said Court Order granting the defendant's motion to compel discovery, Plaintiff Mandy Dias sent her interrogatory answers to the Defendants' Attorney in September 2007. As of this date she has not produced any of the documents requested in the Defendant's request for Production of Documents.

3. The Defendant's attorney made several good faith efforts to acquire said outstanding documents by placing phone calls to Plaintiff's Attorney Brian Corey.
4. Despite good faith efforts by the Defendants' Attorney to obtain the outstanding documents, to this date the Plaintiff Mandy Dias has not complied with the Court's Order.
5. The Plaintiff Mandy Dias has willfully disobeyed this Court's Order to answer Defendants document requests.

WHEREFORE, Defendants Eric Madonna and the City of Fall River request the following relief:

1. An order entering judgment against the Plaintiff Mandy Dias;
2. An order disallowing Mandy Dias to proceed to trial without providing said documents.
3. Such other relief as the Court deems fair and just with respect to Fed.R.Civ.Pr. 37(b)(2).

Respectfully Submitted,
Defendants Eric Madonna and
The City of Fall River,
By Their Attorney,

/s/ Gary P. Howayeck
Gary P. Howayeck, Esq.
Special Asst. Corporation Counsel
Law Department
1 Government Center
Fall River, MA 02720
BBO# 630053
(508) 676-6666 Phone
(508) 674-3610 Fax

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AFFIDAVIT OF ATTORNEY GARY P. HOWAYECK

I, GARY P. HOWAYECK, do hereby swear and affirm as follows:

1. I am Special Assistant Corporation counsel for the City of Fall River, Massachusetts, attorney for the Defendants Eric Madonna and the City of Fall River.
2. I am a member in good standing of the Massachusetts Bar and I am admitted and qualified to practice as an attorney in the U.S. District Court, District of Massachusetts.
3. With respect to this Court's Order of August 22, 2007 to compel Production of Documents, I telephoned Plaintiff's Attorney Brian Corey several times thereafter, in good faith, to resolve the issues regarding the outstanding nature of the documents requested.

4. To this date Attorney Brian Corey has not returned my phone calls nor provided the documents requested.
5. Since the items were originally requested on October 19, **2006**, neither Plaintiff Mandy Dias nor Attorney Brian Corey has produced the requested documents.
6. As of today, the Plaintiff Mandy Dias has not obeyed the Court's Order of regarding production of documents.

SIGNED, under the pains and penalties of perjury, this 26th day of October, 2007

Gary P. Howayeck, Esq.
Special Asst. Corporation Counsel
Law Department
1 Government Center
Fall River, MA 02720
BBO# 630053
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LOCAL RULE 37.1 CERTIFICATE OF COMPLIANCE

I, GARY P. HOWAYECK, hereby certify that, pursuant to Local Rule 37.1, I telephoned Attorney Brian Corey, attorney for plaintiff Mandy Dias, several times on and after October 12, 2007 in a good faith effort to resolve issues with respect to Defendant's request for production of documents. Plaintiff has continually failed to comply with the court order for production of the said documents entered on August 22, 2007

Respectfully Submitted,
Defendants Eric Madonna and
The City of Fall River,
By their Attorney,

Gary P. Howayeck, Esq.
Special Asst. Corporation Counsel
Law Department
1 Government Center
Fall River, MA 02720
BBO# 630053
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CERTIFICATE OF SERVICE

I, Gary P. Howayeck, do hereby certify that I served the following documents upon: Brian Corey, Esquire, 1041 Main Street, Fall River, MA 02720, James Hodgson, Esquire, P.O. Box 952, 32 William Street, New Bedford, MA 02741, Philip N. Beauregard, Esq. P.O. Box 952, 32 William Street, New Bedford, MA 02741, through the ECF system which will send the documents electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 26 day of October, 2007.

1. Motion for Sanctions against Plaintiff, Mandy Dias;
2. Affidavit of Gary P. Howayeck, Esq.
3. Local Rule 37.1 Certificate of Compliance.

Friday, October 26, 2007

Gary P. Howayeck, Esq